

REMARKS/ARGUMENTS

These remarks/arguments are submitted in response to a second and FINAL Official Action dated November 17, 2004. Reconsideration and allowance of independent claim 1 and dependent claims 2-16 are respectfully requested.

The present invention is directed to an electrosurgical instrument for clamping, sealing and cutting tissue that comprises a handle, a body joined to the handle and a jaw assembly joined to the body and arranged such that manipulation of the handle allows tissue at a surgical site to be clamped between opposed jaws of the jaw assembly. A first of the opposed jaws carries a first sealing electrode and has a recess running longitudinally along the length axis of that jaw. Further, the claim requires that this recess have first and second side walls where each side wall has at least a portion extending at an oblique angle to the width axis of the jaw assembly. The other of the two jaws also carries a second sealing electrode with that jaw having a cross-section exhibiting a raised central zone that is adapted to conform to the recess of the first jaw for **pinching and tensioning** the tissue when at least one of the jaws is made to close relative to the other jaw. Completing the combination is a cutting electrode that is supported by one of the opposed jaws.

When the instrument, as described, is made to close about tissue, the tissue is not only clamped but is also stretched and tensioned allowing the tissue to be cut when an appropriate voltage is applied between the cutting electrode and one or the other of the sealing electrodes. Sealing is achieved by applying a different (lesser) voltage between the opposed sealing surfaces on the two jaws.

Independent claim 1 has been rejected under 35 U.S.C. §103 as being directed to an invention which would have been obvious at the time it was made to persons having ordinary skill in the art from what is described in the Wrublewski et al. U.S. Patent 6,174,309 (the '309 patent). This rejection is respectfully traversed for the reasons presented in the accompanying Declaration Under 37 U.S.C. §1.132 by Douglas Wahnschaffe, a person possessing more than ordinary skill in the design and manufacture of electrosurgical instruments. After reciting his extensive experience and training in the

field of electrosurgical instruments and after having carefully studied and considered the '309 patent, he avers that because of the provision in the present invention of the obliquely inclined sidewalls of the recess formed in one of the jaws and a sealing electrode on the other jaw that is complimentary in shape to the recess, tissue structures clamped between the two jaws become tensioned, allowing an immovable cutting electrode to be employed. Mr. Wahnschaffe, on the other hand, states that when tissue is clamped between the jaws in the '309 patent, no tensioning would occur, were it not for the use in the '309 patent of a spring-biased, movable cutting electrode. Mr. Wahnschaffe's Declaration also addresses the discussion appearing at column 4, lines 18-22, of the '309 patent, which the Examiner has asserted teaches shaping the jaw to provide tension in the tissue being squeezed. As Mr. Wahnschaffe points out in paragraph 7 of his Declaration, the referenced passage in the '309 patent does not state that the tissue is tensioned merely by the shape of the jaws. Mr. Wahnschaffe indicates that, instead, tension is imparted by the spring biased, movable cutting element pressing against the tissue and that this tension is released once the tissue is severed.

Claim 1 is certainly not anticipated by the prior art '309 patent, nor can it reasonably be said that the claimed combination would be obvious from the teachings of the '309 patent. That patent relies upon the pressure imparted by a spring biased blade on a tissue structure to provide necessary tension, whereas applicants' arrangement utilizes the shape contour of the opposing jaws to provide the tension, such that a cutting electrode carried by one jaw member can be utilized to electrosurgically cut through the stretched tissue.

Serial No. 10/657,378
Amendment Dated January 26, 2005
Reply to Office Action of November 17, 2004

In that all of the claims remaining in the application depend either directly or indirectly from allowable claim 1, they are now believed to be in condition for allowance, a Notice to that effect is respectfully solicited.

Respectfully submitted,

NIKOLAI & MERSEREAU, P.A.

A handwritten signature in black ink, appearing to read "T. Nikolai", is written over the printed name.

Thomas J. Nikolai

Registration No. 19,283

900 Second Avenue South, Suite 820

Minneapolis, MN 55402-3325

Telephone: 612-339-7461

Fax: 612-349-6556

Serial No. 10/657,378
Amendment Dated January 26, 2005
Reply to Office Action of November 17, 2004



CERTIFICATE OF MAILING

I hereby certify that the foregoing Amendment and Declaration of Douglas S. Wahnschaffe in response to the Final Official Action of November 17, 2004 in application Serial No. 20/657,378 of inventors, Scott T. Latterell, et al., filed September 8, 2003, for "Bipolar Electrosurgical Instrument for Cutting, Dessicating and Sealing Tissue" are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP AF, Commissioner for Patents, P.O. Box 1450, Arlexandria, VA 22313-1450 on January 26, 2005.

Linda J. Qui